

GREATER LONDON AUTHORITY

Corporate Management
Our ref: MGLA221215-1869

Date: 19 February 2016

Dear [REDACTED]

I am writing again regarding your request for information, which the GLA received on 22 December 2015 which has been considered under the Environmental Information Regulations 2004 (EIR). The EIR provide a similar right of access to information as the Freedom of Information Act, but refer specifically to environmental information. Under the EIR, the term "environmental information" includes information such as policies, plans and proposals that might affect the state of the land, such as planning proposals and developments.

In your request, you asked us for:

"1) Silvertown Quay

A copy of the development contract between the Greater London Authority or its agents and The Silvertown Partnership, a consortium of Chelsfield Properties, First Base and Macquarie Capital or its agents signed in 2013. Please include any further documentation which establishes a deferred land payment, payment share, joint venture or any other financial obligation between the Greater London Authority or its agents and the Silvertown Partnership and its agents.

2) Stephenson Street

A copy of the development contract between the Greater London Authority or its agents and Berkley Homes or its agents signed in 2015. Please include any further documentation which establishes a deferred land payment, payment share, joint venture or any other financial obligation between the Greater London Authority or its agents and Berkeley Homes and its agents.

3) St Clements Hospital

A copy of the development contract between the Greater London Authority or its agents and Galliford Try. Please include any further documentation which establishes a deferred land payment, payment share, joint venture or any other financial obligation between the Greater London Authority or its agents and Galliford Try and its agents"

The GLA are in the process of finalising the Development Agreement with Berkeley Homes in relation to the Stephenson Street scheme so are unable to provide a copy of the Development

Agreement at this time. It is anticipated that the Development Agreement will be signed at some point in 2016.

We are unable to provide the requested information relating specifically to the land payment and other financial obligations that were bid by the preferred bidder, Berkeley Homes, as the procurement process is still live and will remain so until the Development Agreement is signed by the GLA and disclosing such information is restricted by the Public Contracts Regulations 2015 (Regulation 21 (1)).

In addition, the information contained in the Berkeley bid relating to land payments and other financial obligations, when considered in light of the EIR legislation, is exempt from publication in reliance upon the exclusion contained in regulation 12(5)(e) Confidentiality of commercial or industrial information given that the information relates to Berkeley's commercial interest, the disclosure of which could prejudice those interests.

We have conducted searches with the Housing and Land team and have obtained the attached information which is in scope of your request relating to St Clements Hospital and Silvertown Quays. Please see attached documents.

After careful consideration, we have decided to withhold some of the information that is covered by the exceptions to our duty to disclose information, found under regulation 12(5)(e) of the EIR. This provision exists to protect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest, and where disclosure would adversely affect the interests of the supplier of the information.

I have included the rationale behind our decision to withhold the specific information covered by this exception in the annex to this letter.

We have also redacted names of certain individuals under regulation 12(3) of EIR as this would breach principle 1 of the Data Protection Act.

If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

Yours sincerely

Meena Shah

Information Governance Officer

If you are unhappy with the way the GLA has handled your request, you may complain using the complaints procedure, available at: <http://www.london.gov.uk/about-us/greater-london-authority-gla/sharing-our-information/freedom-information>

Annex – EIR Exception Provision

Exemption provisions
EIR 12(5)(e) - disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
How the exemption applies to this information
<p><u>Is the information commercial or industrial in nature?</u></p> <p>The information relates to the GLA's and its Development Partner's commercial interests, the disclosure of which could prejudice those interests. The GLA submits that since the information contained in the documents is commercial in nature as it relates to the detailed analysis of the proposed development, this condition of the exception is therefore satisfied.</p> <p><u>Is the information confidential under either the common law of confidence, contract, or a statutory bar?</u></p> <p>The information was passed to the GLA under a duty of confidence and consequently under the expectation that they would not be widely accessed, circulated or distributed.</p> <p>We would also argue that some of the information is also covered by common-law of confidence – it is not trivial in nature, has the necessary qualities of confidence, and was provided as part of process whereby it was expected by both parties that certain information would be held in confidence.</p> <p>We are however mindful of the views of the Information Commissioner (ICO) in regards to how this exception provision is engaged and applied, and we have also taken note of the recent decision by the Information Tribunal (EA/2013/0162)¹, in particular paragraph 42 which states:</p> <p><i>'The legislature must be taken to intend that it is not always in the public interest for a public authority to choose to keep information confidential. There is no breach of trust when a public authority fulfils its statutory obligation under FoIA or EIR... They recognise in contracts that in an individual case, depending on the circumstances, the public authority may have a duty disclose.'</i></p> <p>In this case, we have decided that limited pieces of information are protected by a legitimate obligation of confidence.</p>

¹<http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20%2809.05.14%29.pdf>

Is the confidentiality protecting a legitimate economic interest?

We are strongly of the view that disclosure would cause harm to the commercial interests of the developers and those of the GLA; and that these can be considered to be legitimate economic interests. In relation to the legitimate economic interests, we would make reference to the Information Commissioner's guidance, which states:

'Legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income'.²

The information covered by this exception provision falls within the following categories:

- Information relating to internal costs borne by the developers in enabling the development of the schemes
- Information relating to potential costs incurred from the construction of the scheme, including rights-of-light and financing.
- Information relating to the potential values derived from disposable elements of the complete scheme, including projected sales rates and timing
- Information relating to the adopted Site Value for the purposes of viability
- Phasing information and associated timing information
- Financial appraisals including associated risk analyses and target rates of return
- Additional costs, such as marketing, disposal and rights-of-light cost estimates

The release of information falling within these categories could

- jeopardise and prejudice tendering negotiations;
- affect the developers commercial negotiating position opposite contractors;
- affect the ability of the developers to secure competitive sales or leasing arrangements for the units that will be constructed; and/or
- potentially delay the implementation of the proposed development.

We therefore consider that the legitimate economic interests of the developers in this

² https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

matter mirror the description provided in the Commissioner's guidance and that those could be harmed or prejudiced by the release of specific pieces of information covered by this request.

Public interest test (where applicable)

Considerations favouring disclosure

It is prudent to note the general, underlying rationale for the disclosure of environmental information, as outlined in Directive (2003/4/EC)³ which gave rise to the Environmental Information Regulations,

Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, eventually, to a better environment.

We acknowledge that there is a general public interest in transparency in relation to planning and development matters, particularly in the decision making behind, and progress of, developments of this size and impact. Disclosure of this information would enable the community affected by the development to understand more fully the decision making process.

We also consider that disclosure of information that would engage and improve public participation in, and understanding of, the decision making processes involved, carries particular weight.

The disclosure of this information would also inform discussions regarding the number of affordable homes to be provided by this development; an important local issue.

Furthermore, the public interest is served by the GLA being transparent and open to scrutiny to increase diligence and working to protect the public purse.

Considerations favouring non-disclosure

There is of course an inbuilt public interest in maintaining commercial confidences. As discussed in the aforementioned Information Tribunal decision (EA/2013/0162), the courts have recognised the enduring strength of the public interest in maintain the confidentiality of negotiations and bidding that take place in relation to public/private sector partnerships.

It is not in the public interest to cause economic harm to organisation operating in a competitive environment.

The best interests of the public are met by the GLA being able to foster relationships of trust with its partners, through which the sharing of confidential, sensitive financial information can be shared to support the development of sites such as Silvertown Quays, Stephenson Street and St Clements Hospital.

Publishing sensitive financial information shared with the GLA under an expectation

³ <http://ec.europa.eu/environment/aarhus/legislation.htm>

of confidentiality would deter these partners from sharing similar information with GLA in the future, particularly if they felt that the GLA would not treat information that could harm their economic interests with due care. This would ultimately hinder the ability of the GLA to deliver its stated objectives for London.

As noted in the same Information Tribunal decision:

Once you use private sector profit making organisations in order to help fund regeneration and to deliver infrastructure, social housing and other public goods, then inevitably considerations of commercial confidentiality and the need to avoid harm to commercial interests must be given full weight when assessing the public interests for and against disclosure

There is a strong public interest in protecting commercially sensitive decisions about price. There is also a specific public interest in preventing others obtaining a developer's knowledge or expertise, or expertise which a developer has paid for, for free.

It is also important to note the importance, and the reliance of local communities, on public/private sector partnerships to deliver affordable housing. There is a strong public interest in these developments succeeding and not being undermined.

Disclosure of some of the information covered by these provisions would serve to prejudice relations between the GLA with the developers concerned in a situation where that relationship exists to serve the best interest of the public.